



Amendments for Cable Franchise Legislation

MML and MTA actively participated with all stakeholders in meetings convened by Rep. Nofs from September 13th - 17th (26 Total Hours) regarding House Bill 6456. In these meetings, we offered a number of options to the workgroup that would have brought MML and MTA close to a compromise. These options were based on retaining existing local franchise contracts and related revenue.

In an ongoing effort to improve House Bill 6456, the Michigan Municipal League and the Michigan Townships Association are putting forth four amendments that would encourage a compromise. We ask for your support of these amendments.

If you have specific questions regarding these amendments, please contact Joe Fivas at (517) 230-7007 or David Bertram at (517) 927-4314.

Amendment #1:

Current cable franchise contracts must remain in place until they terminate, or until there is competition within a community.

*American government and business is built on the sanctity of contracts.
The legislature should honor contracts, and not break them.*

Amendment #2:

Michigan should adopt a 'build-out' requirement that guarantees investment, jobs, competition, and choice on a regional basis.

According to national and state legal experts, the 'build-out' language in House Bill 6456 is meaningless and filled with several loopholes. MML and MTA are proposing language that would stop any provider from red-lining and/or cherry-picking, and would also guarantee infrastructure investment in Michigan. Michigan deserves no less.

Amendment #3:

An improved 'gross revenue' definition would limit revenue reductions for local communities.

Local communities would have significant revenue impact under House Bill 6456. This is a small change in the 'gross revenue' definition that would provide some financial relief.

Amendment #4:

This amendment allows for interconnection for community, school, and public access television.

This gives PEG operators more assurance on costs of interconnecting with providers.

ABROGATION OF EXISTING FRANCHISES

Delete Sec. 5 (line 3 of page 11 through line 3 of page 12) and insert.

Sec. 5

An incumbent video provider may, in its discretion, elect to terminate its negotiated franchise and obtain a uniform video service local franchise agreement upon:

- 1) Providing the relevant franchise authority with written notice of its election consistent with the requirements of Section 2 (3) (elements of uniform franchise provisions) on or after the date that another video service provider within the franchise area operating pursuant to a uniform video service local franchise agreement is offering a video service to more than 30 percent of residential households within such operator's franchise area.
 - a. For purpose of this section, only wireline video services offering shall be included in the calculation of percent of residential households being passed.
- 2) The following terms of the incumbent video providers franchise shall continue to be provided by an incumbent video provider that was furnishing services pursuant to its municipal cable franchise as of the effective date of this Act.
 - a. Build out and non discrimination – An incumbent's obligations to build out its service territory and not engage in discriminatory actions shall survive so long as the incumbent providers offers services within the franchised area.
 - b. Institutional network capacity, however defined or referred to in the municipal cable franchise but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of the termination, and
 - c. Cable services to community public buildings, such as municipal buildings and public schools, shall continue to be provided to the same extent provided immediately prior to the date of the termination. Such cable service generally refers to the existing cable drop connections to such facilities and the tier of cable service provided pursuant to the franchise at the time of the termination.

BUILDOUT REQUIREMENT

At line 25 on page 7, insert a “.” after “providers” and strike the remaining text on line 25, 26 and 27.

Insert at line 12 on page 6.

(T) “A requirement that the provider comply with the buildout requirements of Section 15.”

Insert at the end of the bill

Section 15 – Reasonable Build-out requirements

(A) SCHEDULE.— A video service provider that is affiliated with an incumbent local exchange carrier or an affiliate thereof shall make its video system capable of providing cable service to all households in the franchise area in accordance with the following schedule:

“(i) To all of the occupied households in an initial service area identified by the provider under the notice required in Section 3 within no less than 10 months after the date of the grant of the uniform video service local franchise agreement

“(ii) To not less than 65 percent of the households in its franchise area within no more than 3 years after the date of the effective date of the standard franchise.

“(iii) To not less than 80 percent of such households in its franchise area within no more than 7 years after the effective date of the uniform video service local franchise agreement

“(B) SPARSELY POPULATED AREAS.—In determining compliance with the percentages required under this paragraph, the total number of households required to be served in any franchise area shall be reduced by the number of households in any geographic part of the franchise area in which there are fewer than 20 households per square mile.

“(C) MONITORING AND INSPECTION.—A franchising authority municipality shall have the right to monitor and inspect the deployment of video services by such video provider. The provider shall submit semiannual progress reports detailing the current provision of cable services in accordance with the deployment schedule established pursuant to this Section and the cable operator’s deployment plan.

“(D) ENFORCEMENT.—If the franchise authority determines that a video provider violated this Section or Section 9 (non-discrimination) it may—

“(1) may assess a civil penalty in such amount as may be authorized under State law for the franchising area in which the violation occurred for violation of its anti discrimination laws; and

“(2)(i) revoke the uniform video service local franchise agreement standard franchise if it determines, after notice and an opportunity for a hearing, that the video service provider has willfully violated this section; or

“(ii) bring a civil action against the provider in any court of competent jurisdiction for damages, an order directing the provider to rectify the noncompliance, or other appropriate relief. 5

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Delete Section 6 (4)

Insert new Section 6 (4)

For purposes of this section, "gross revenues" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the provider for the provision of video programming and video service by whatever means delivered within the jurisdiction of the franchising entity. Gross revenues shall include all of the following:

- (a) All charges and fees paid by subscribers for the provisions of video service, including equipment rental, late fees, insufficient funds fees, fees attributable to video service when sold individually or as part of a package or bundle, or functionally integrated, with services other than video service.
- (b) Any franchise fee imposed on the provider that is passed on to subscribers.
- (c) Compensation received by the provider for promotion or exhibition of any products or services over the video service, such home shopping.
- (d) Revenue received by the provider as compensation for carriage of video programming on that provider's video service.
- (e) All revenue derived from compensation arrangements for advertising attributable to the local franchise area.
- (f) Any advertising commissions paid to an affiliated third party for video service advertising.

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Section 4

Subsection 3 – STRIKE

Subsection 4 becomes subsection 3

A video service provider ~~may request that an~~ and incumbent video provider *shall* interconnect ~~with its~~ video systems for the sole purpose of providing access to video programming that is being provided over public, education, and government channels for a franchising entity that is served by both providers. ~~Where technically feasible~~ Interconnection shall be allowed under an agreement of the parties. ~~The video service provider and incumbent video provider shall negotiate in good faith and may not~~ unreasonably withhold interconnection. Interconnection may be accomplished by any reasonable method, *which does not degrade the signal*, as agreed to by the providers *and the local franchising entity*. The requesting video service provider shall pay the construction, operation, maintenance, and other costs arising out of the interconnection, including the reasonable costs incurred by the incumbent provider. *It shall be the responsibility of the video service provider to convert the video programming provided over public, education, and government channels into a format or protocol utilized by the provider to deliver services.*